IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 380 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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STATE OF GUJARAT

Versus

PATEL NAGJI JERAM

Appearance:

1. Criminal Appeal No. 380 of 1992

MR MA BUKHARI,APP for Petitioner No. 1

MR NITIN M AMIN for Respondent No. 1-2

CORAM : MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 02/08/2002

ORAL JUDGEMENT

1. The respondents together with one Jeram Ramji were tried for the alleged offences punishable under sections 326, 324 and 114 of IPC in Criminal Case No.3432 of 1983 before the learned Judicial Magistrate, First

Class, Junagadh. The learned Magistrate, at the end of the trial, by his judgment and order dated 12.8.1987, convicted the respondents accused for offence punishable under section 326 of IPC and sentenced to suffer R.I. for two years and to pay a fine of Rs. 250/-, i/d, to undergo further R.I. for two months and for offence punishable under section 324 and 114 of IPC and sentenced to suffer R.I. for one year and to pay a fine of Rs.100/-, in default, to undergo further R.I. for one month. During the pendency of the trial, the third accused Jeram Ramji died. The learned trial judge, therefore, ordered that the case against him shall stand abated.

2. The respondents preferred appeal against the said decision being Criminal Appeal No.36 of 1987 before the learned Sessions Judge, Junagadh who allowed the said appeal by his judgment and order dated 30.1.1992 and set aside the judgment and order of conviction and sentence passed against the respondents. The State has filed the present appeal challenging the said decision.

3. The incident in question happened on 4.6.1983 at about 5.30 or 6.00 in the morning when the informant Chandulal Naranbhai, his brother Bhimji Ex. 44 and Gopal Ex. 41 were going to their field in a cart. After having worked upto 12 o'clock, while they were returning home for lunch, when they were passing near the field of deceased Jeram, the accused intercepted them. All the three accused were having axe with them. After some altercations, A/2 gave axe blow on the head of the complainant, A/1 also inflicted axe blow on the person of Bhimji and Gopal. On seeing the injuries on the person of both the brothers, the informant became unconscious. Both the brothers of the informant were thereafter taken to the hospital. The complainant thereafter went to Mendarda police station and lodged his complaint against the accused.

4. Initially investigation was carried out by PSI Mansukhlal Dave, Ex. 59. Thereafter PSI Mavani took over the investigation. After completion of investigation, chargesheet was filed against the accused in the Court of learned Judicial Magistrate, First Class, Junagadh.

5. The charge Ex. 6 was framed against the accused. The accused pleaded not guilty and claimed to be tried.

6. After appreciating the evidence on record including further statement under section 313 of the Code

of Criminal Procedure, the learned Magistrate accepted the prosecution case and passed the impugned judgment and order of conviction and sentence which was set aside by the appellate court. Hence the present appeal.

7. I have narrated the facts from the complaint of the informant Chandulal and, therefore, it is not necessary to re-narrate his evidence. Bhimji Naranbhai, Ex. 44 and Gopal Naranbhai Ex.41 have supported the evidence of the informant Chandulal. The only discrepancy in their evidence is with respect to the part played by the accused. Bhimjibhai Naranbhai Ex.44, in his evidence, has deposed that the deceased Jeram Ramji had inflicted axe blow on the head of Chandulal while Gopal Naranbhai Ex. 41 as well as informant Chandulal Naranbhai, in their evidence, have stated that it was the accused no.2 Jayantilal Jeram who gave axe blow. The aforesaid discrepancy, though prima facie appears to be quite minor, however, the same is required to be considered in light of other factors. From the evidence on record, it appears that frequent quarrels used to take place between the prosecution witnesses and the accused. The learned appellate judge acquitted the accused on the ground that both the accused who had sustained injuries, even though they were examined by the doctor and in fact, injury certificate was also issued by the doctor, neither the concerned doctor has been examined nor the certificates were produced on record. Thus, the prosecution has tried to suppress the genesis of the incident. The Investigating Officer- Police Sub Inspector Mr. Mavani Ex.59 has deposed that the injury certificates Ex. 67 and 68 have been produced. However, the prosecution has not examined the concerned doctor. The learned appellate judge, after perusing the said certificates, has observed that Ex. 67 pertains to the injury sustained by A/1 Nagji Jeram who was examined by the doctor on 5.6.1983 at about 12.30 noon and he had noticed the injuries which were possible with hard and blunt substance. Similarly,injury certificate Ex. 68 pertains to the accused no.2 Jayanti Jeram. There are as many as 12 injuries sustained by him which are also possible by hard and blunt substance. In the instant case, neither the informant nor any other injured witnesses have explained the injuries sustained by the accused and on the contrary, in their cross examination, they have stated that they would not like to explain the injuries sustained by the accused. In view of this, it can safely be inferred that the prosecution witnesses are deliberately trying to suppress the genesis of the incident. As stated above, frequent quarrels used to take place between the prosecution witnesses and the

accused and when the prosecution witnesses are suppressing the real incident, the only possible conclusion which can be drawn is that the prosecution has failed to establish the charge against the accused. In my opinion, the learned appellate judge was justified in allowing the appeal preferred by the respondents accused challenging their conviction and sentence. Once the benefit of doubt is given, this Court would be slow in reversing the same and that too, after a gap of ten years.

8. In the circumstances, I see no merit in this appeal and the same is dismissed. Bail-bonds stand cancelled.

(Kshitij R.Vyas,J.)

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